

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

XO California, Inc.,

Complainant,

v.

Verizon California, Inc.

Defendant.

Case 04-02-019
(Filed February 27, 2004)

**ADMINISTRATIVE LAW JUDGE'S RULING DENYING MOTION
TO DISMISS AND SETTING BRIEFING SCHEDULE**

Summary

This ruling finds that the Commission has jurisdiction over this complaint and denies the motion to dismiss. As no disputed issues of material fact are evident at this time, hearings are not necessary. The ex parte prohibition for adjudicatory proceedings found in Commission Rule of Practice and Procedure (Rules) 7(b) shall nevertheless remain applicable to this proceeding. The parties shall file briefs in accord with the adopted schedule.

Background

On February 27, 2004, XO California, Inc., (XO) filed this complaint against Verizon California, Inc., (Verizon). XO and Verizon are parties to an interconnection agreement that provides, among other things, reciprocal compensation rates for the transportation and termination of local telephone traffic. XO alleged that Verizon was charging improper reciprocal compensation rates for internet service provider bound calls by unlawfully imposing rates

adopted in a 2001 Federal Communications Commission (FCC) decision. XO also contended that Verizon refused to pay for two-way interconnection facilities installed by XO, notwithstanding the fact that Verizon has billed XO, and XO has paid, corresponding charges from Verizon. XO contended that Verizon's actions violated the interconnection agreement, Public Utilities Code, Commission decisions and federal law. XO sought an accounting of all payments owed, a Commission order directing payment, and a cease and desist order.

Verizon responded that the Commission lacked jurisdiction over this dispute because the interconnection agreement provides that private arbitration is the exclusive remedy for all disputes between the parties. Verizon moved to dismiss the complaint due to the lack of jurisdiction. On the issue of reciprocal compensation for internet service provider bound calls, Verizon argued that the FCC had determined that such calls are not subject to reciprocal compensation, and that the interconnection agreement's "change of law" provision automatically incorporated the FCC ruling. Verizon also stated that XO's allegations about two-way interconnection facilities were neither clear nor definite.

XO opposed Verizon's motion to dismiss and argued that the complaint raised issues beyond the interconnection agreement, and that private arbitration was not well-suited to resolve the policy issues raised by the complaint.

Resolution of the Motion to Dismiss

The interconnection agreement establishes a mandatory private arbitration alternative dispute resolution procedure as the "exclusive remedy for all disputes between [the parties] arising out of the [interconnection agreement] or its breach." Verizon interprets this provision to divest the Commission of jurisdiction over this complaint. XO counters that the complaint involves issues

of federal, state, and Commission requirements, and that the Commission is better suited to resolve these issues in a consistent manner. As set out below, the particular facts of the disputes between these parties go sufficiently beyond the terms of the interconnection agreement so as to require Commission resolution.

The interconnection agreement requires that all disputes “arising out of the agreement” be resolved through mandatory private arbitration. The issue of compensation for the delivery and receipt of internet service provider bound local calls, however, cannot be resolved simply by the terms of the interconnection agreement. The dispute will require interpretation and implementation of numerous facets of the FCC order, as well as a determination of the applicability of the Commission’s requirement that all amendments and modifications be filed with and approved by the Commission. No party has cited to Commission or other decisions directly on point that articulate the law that the arbitrator would apply to determine the outcome of these questions. These issues, and others, may apply to interconnection agreements between other carriers, all of which should be resolved in a uniform way. The Commission has the expertise and authority to address unsettled questions of law that may have applicability to other carriers. Private arbitration is not well suited for resolving issues of first impression in a consistent manner.

In conclusion, the particular issues raised by XO do not arise solely under the terms of the interconnection agreement. Consequently, the mandatory private arbitration requirement does not apply to these disputes, and the Commission should have the opportunity to consider the issues and announce a publicly available resolution. Therefore, Verizon’s motion to dismiss this complaint for lack of jurisdiction is denied.

Need for a Hearing

No party objected to the initial determination that no hearing was necessary. The briefs filed to date have not revealed a disputed issue of material fact. Therefore, we will retain the initial determination that evidentiary hearings are not necessary. However, as subsequent events may result in altering this determination, the *ex parte* communication prohibition found in Rule 7(b) will remain applicable to this proceeding.

Briefing Schedule

As there are no disputed issues of material fact, written briefs will be an efficient means of addressing the remaining issues in this proceeding. The parties shall adhere to the following briefing schedule:

XO File and Serve Opening Brief	September 3, 2004
Verizon File and Serve Responsive Brief	September 24, 2004
XO File and Serve Reply Brief	October 7, 2004
Deadline for Resolving Complaint ¹	February 26, 2005

IT IS SO RULED:

Dated August 6, 2004, at San Francisco, California.

/s/ MARIBETH A. BUSHEY
Maribeth A. Bushey

¹ Complaint cases must be resolved within 12 months of filing, as required by Pub. Util. Code § 1701.2(d).

Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail, this day served a true copy of the original attached Administrative Law Judge's Ruling Denying Motion to Dismiss and Setting Briefing Schedule on all parties of record in this proceeding or their attorneys of record.

Dated August 6, 2004, at San Francisco, California.

/s/ JANET V. ALVIAR

Janet V. Alviar

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to ensure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.